THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 14.7.2005

Coram

THE HONOURABLE MR. MARKANDEY KATJU, THE CHIEF JUSTICE

and

THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA

Writ Petition No.5202 of 1998

Mohamed Gani
Secretary
Gani Beebi Darga Mosque
Balasamudram. .. Petitioner

versus

1. The Superintendent of Police
   Dindigul District,
   Dindigul.

2. State of Tamil Nadu
   by its District Collector
   Dindigul District,
   Dindigul.

3. The Inspector of Police,
   Palani Taluk Police Station,
   Palani.

4. The Revenue Divisional Officer,
   Palani.

5. Poovendan .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issue of writ of mandamus directing the respondents 1 to 4 to give adequate security to the Muslims of Balasamudram village while they take out the dead bodies to their graveyard in Balasamudram village in S.No.53/1 in accordance with the agreement piloted by the fourth respondent dated 25.1.1998 between the Muslims and Harijans of Balasamudram village.

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For petitioner : Mr. A. Sirajudeen

For respondents 1 to 4 : Mr. V.Raghupathy
Govt. Pleader

For respondent 5 : No appearance

O R D E R

(Order of the Court was made by The Honourable The Chief Justice)

Heard learned counsel for the petitioner Mr.A.Sirajuddin, and learned Government Pleader for respondents 1 to 4 and perused the record. This writ petition was admitted by the Court on 07.04.1998. On that date learned Public Prosecutor accepted notice on behalf of respondents 1 to 4. Notice was issued to respondent - 5, and it was served on him on 19.03.2001. However, none has appeared for respondent - 5.

2. By means of this writ petition the petitioner, who is a Muslim, has prayed for the issuance of a writ of mandamus directing the respondents 1 to 4 to give adequate security to the Muslims of Balasamudram village in Dindigul District while they take out the dead bodies to their graveyard in the said village in S.No.53/1 in accordance with the agreement piloted by the fourth respondent dated 25.1.1998 between the Muslims and Harijans of Balasamudram village.

3. The petitioner has alleged that there are about 2000 Muslims living in the said village and they have only one graveyard mentioned above. To reach the graveyard there are only two roads for the village Muslims, one is Kottai Kaliamman Street, and another is Manukal Street. It is alleged that the Kottai Kaliamman Street is the shortest route through which the Muslims of that village have been traditionally taking the dead bodies to the burial ground.

4. It is alleged in paragraph 4 of the petitioner's affidavit that in April 1997 some local Harijans attempted to put up an arch in Kottai Kaliamman Street. The local Muslims objected to that since that would prevent them from taking the dead bodies to the graveyard. They sent objections to the District Collector on 8.4.1997. When the local Harijans proceeded with the construction of the arch the local Muslims sent objections to the Special Officer of the Panchayat of Balasamudram on 23.5.1997. On 27.5.1997 at the instance of the local police a compromise was arrived at between the two communities. As per the compromise, the construction of the arch was permitted, but the Harijans permitted the local Muslims to use the Kottai Kaliamman Street as usual, but during the temple festival it was agreed that Muslims should take the dead bodies through Mandukal street.

5. However it is alleged in paragraph - 7 of the petitioner's affidavit that in breach of that agreement the local Harijans have tried to put up an iron gate also in the arch with an intention to prevent the

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Muslims from taking their coffins through the Kottai Kaliamman Street. The Wakf Superintendent on 22.11.1997 gave a complaint to the District Collector, Dindigul complaining about the occurrences and violation of the rights of the Muslims. It is also alleged in paragraph - 7 of the affidavit that the local Harijans prevented the Muslims from taking the dead bodies through the Kottai Kaliamman Street, and hence, they also lodged a report to the Balasamudram Panchayat Special Officer and Tahsildar, Palani, on 27.11.1997. They also lodged a report with the Sub-Inspector of Police, Palani Taluk Police Station on 18.12.1997. Thereafter on 8.1.1998 a peace meeting of the two communities was organised by the Revenue Divisional Officer, Palani. It is alleged that in the peace meeting on 12.1.1998 a compromise was arrived at whereby it was agreed to take the dead bodies through Kamarajar colony road and near Sulian house through the Kottai Kaliamman Street. Thus the route was modified and the people of both communities signed that agreement. Thereafter a fresh agreement was entered into on 27.1.1998 and the Muslims of the village were requested to use Mandukal road and the Harijans were obliged to keep the route free from any obstruction. The Muslims were permitted to put up an arch in the Mandukal road, but it is alleged that the people in that area objected to that and prevented the Muslims from putting up the arch and taking the dead bodies.

6. It is alleged that the fifth respondent was acting as a champion of the local Harijans and was instigating the local people to violate the rights of Muslims in order to create communal tension so that he can garner votes in future elections. Since he was an M.L.A. at that time it is alleged that the local officials were also keeping silent and the three compromises were violated.

7. A counter affidavit has been filed by the first respondent, the Superintendent of Police, Dindigul District. It is stated in paragraph - 3 thereof that in Balasamudram village there are 5000 families belonging to various communities and religions, including about 1000 families of Muslims. About 5.39 acres of poramboke land situate at S.No.53-1 belongs to Muslims and they use this land as a burial ground. The Muslims used Kottaikaliamman Street for taking the dead bodies to the abovesaid burial ground upto April 1997, when the Harijans started objecting to taking out bodies through this street.

8. In paragraph 3 of the counter affidavit the background of the dispute has been mentioned in detail which has already been stated above. It is alleged that now the Muslims are peacefully enjoying their right of taking out the dead bodies through the Mundakal street to their burial ground, and the Harijans do not raise any objection or prevent them. It is alleged that the situation is peaceful. However the petitioner wants police protection while taking the dead bodies of Muslims to the burial ground. It is alleged that since the problem of Muslims was amicably settled police protection is not necessary.

9. In paragraph 6 of the counter affidavit it is stated that the Harijans of Balasamudram village have not put up any gate in the arch

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constructed on the Kottai Kaliamman street.

10. In paragraph 7 of the counter affidavit it is alleged that the Harijans of Balasamudram village never prevented the Muslims from taking dead bodies through Kottai Kaliamman Street.

11. In paragraph 9 of the counter affidavit it is denied that the fifth respondent tried to create communal tension.

12. Since some of the facts in the petition are disputed, we are not going into the veracity of the specific allegations in the petition. However, we would like to lay down the broad legal and Constitutional principles in this connection.

13. This is a free, democratic and secular country. In our country people of all religions, castes and communities are equal under the Constitution, vide Articles 14 to 18, and they have a right freely to practice their religion, vide Article 25. This country does not belong to Hindus alone. It belongs equally to Muslims, Christians, Buddhists, Jains, Parsis, Sikhs, Jews, etc., and all are equal under the law. Also, it is not that only Hindus can live in this country as first rate citizens while others can live only as second rate citizens. That is not so. In our country all citizens are, and are entitled to live, as first rate citizens. It is the greatness of our Founding Fathers who made the Constitution that at the time of Independence in 1947 when the sub continent was engulfed in religious madness they insisted that our country shall not be declared as a Hindu State, but shall be a secular State. This was indeed a very difficult thing to do at that time, because when passions are inflamed it is difficult to keep a cool mind. There must have been tremendous pressure on our Founding Fathers to declare India a Hindu State, particularly since Pakistan had declared itself an Islamic State. It is the greatness of our Founding Fathers that they kept a cool mind and resisted these pressures, and provided for a Secular State in India under our Constitution.

14. A basic feature of India is that it is a country with tremendous diversity having so many religions (including their different sects), castes (including hundreds of sub-castes), communities, languages, ethnic groups, etc. Hence, the only policy that can work in this country, and keep it united and on the path of progress is the policy of secularism and giving equal respect to all religions, castes, ethnic groups, communities, languages, cultures, etc. Without such a policy our country cannot survive for long.

15. We can contrast our country with China which has a population of 125 crores, as compared to our population of 105 crores, and which has more than twice our land area, but in which there is broad homogeneity. 96% Chinese belong to one ethnic group called the Han Chinese. They all have Mongoloid features, and a common script (Mandarin). On the other hand, in India, there is tremendous diversity, so many religions, castes, languages, ethnic groups, cultures, etc., (which is because immigrations

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into India have been taking place for thousands of years). Hence, the only policy which will work in our country and hold it together and take us to the path of prosperity is the policy of secularism and equal respect to all communities. This was the path shown to us by our great Emperors Ashok and Akbar, who gave equal respect to all religions and communities.

16. It is due to the wisdom of our Founding Fathers who insisted that India should be a secular country that India is today united and is progressing. The Constitution of India enshrines the modern values of secularism and equality which the Founding Fathers cherished.

17. Thus, Article 25(1) of the Constitution states:-

> "Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion".

18. In our opinion, the right to bury dead bodies in accordance with one's religious rites and customs is a part of Article 25 of the Constitution, and hence it is a fundamental right.

19. From a perusal of the facts on record it appears that in village Balasamudram there are about 5000 families, and of them, 1000 families are Muslims. Thus Muslims are a minority in that village. It is the duty of the majority community in any particular area in our country to protect the minorities, and see to it that the members of the minority community (whether it is a religious minority or caste, ethnic or lingual minority) are made to feel secure and live with respect, and are not harassed in any way. Respect for minorities is a mark of a civilized people in the modern world. Hence it is absolutely essential that wherever in any particular place or region in our country any community is in the minority, the majority community must see to it that the minority community is made to feel secure and is not oppressed or in any way harassed, but can live with respect and with equality with others.

20. One can understand an objection to taking the dead bodies through a private land. No one can trespass into a private land. However, in this case, there is no allegation that the Muslims of village Balasamudram wanted to take the dead bodies through some private land. The Kottai Kaliamman street and the Mandukkal street are both public streets, and anybody, whether Hindu, Christian or Muslim or of any other religion can take their dead bodies through those streets. Nobody has a right to obstruct carrying the dead bodies to a graveyard or a cremation ground through a public street, such as Kottaikaliamman street and the Mandukkal street. Thus the Muslims of the village in question have full right to carry their dead bodies through Kottai Kaliamman Street or the Mandukkal Street or any other public street at their option. The Administration and Police will see to it that this right of the Muslims in the village in carrying the dead bodies through the public streets to their graveyard is not obstructed by anyone. The persons who cause obstruction must be taken to task immediately and criminal proceedings must be initiated against such persons in accordance with the relevant provisions of the Penal Code

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and the Code of Criminal Procedure. This Court will not tolerate any infraction of the secular fabric of the Constitution as this is absolutely essential for the unity and prosperity of our country.

21. As already stated above, the right to practise one's religion freely is enshrined in our Constitution under Article 25(1). It is a fundamental right, and this includes the right to bury dead bodies in accordance with one's religious rites and customs.

22. However, it may be noted that the right to practise one's religion freely as provided under Article 25(1) of the Constitution is subject to public order, morality and health. The question may arise as to how to strike a balance between the right of practising one's religion freely and the maintenance of public order.

23. In our opinion, in the name of public order one cannot prohibit a person from performing the essential rites and ceremonies prescribed by one's religion. Thus, in our opinion, the Government authorities cannot prohibit the Hindus from going to Temples or the Muslims from saying their Namaz on the ground that this would result in a breach of public order.

24. As observed by the Supreme Court in E.R.J.Swami Vs. State of Tamil Nadu, AIR 1972 SC 1586, Article 25(1) includes the freedom to practise rituals and ceremonies which are an integral part of one's religion. (See also Gulam Abbas Vs. State of U.P., AIR 1981 SC 2198 (paras 2 and 34)) .

25. From the right to practise one's religion follows the right to take out religious processions, vide Gulam Abbas Case Vs. State of U.P. (supra). This, however, is subject to the restrictions which may be imposed by the authorities for preventing a breach of the peace or obstruction of the thoroughfare.

26. In our opinion, the right to take out religious processions would include the right to take dead bodies for burial in the graveyard. As observed by the Supreme Court, this right cannot be interfered with on the ground that it offends the sentiments of another community, vide Gulam Abbas Vs. State of U.P. (supra).

27. In every religion there are rites and ceremonies performed on the death of a member of that religion, and these include the carrying or transporting the dead body to the cremation place or graveyard. In our opinion, these rites and ceremonies are an essential and integral part of that religion, and hence cannot be prohibited in a secular State.

28. It may be mentioned that Articles 25 and 26 of the Constitution guarantee the right to practise one's religion not only in the matter of faith or belief but also all those rituals and observances which are regarded as integral parts of a religion by the followers of that religion, vide Stainislaus Rev. Vs. State of M.P., AIR 1977 SC 908, Mittal, S.P. Vs. Union of India, AIR 1983 SC 1 (paras 77 & 78),

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E.R.J.Swami Vs. State of Tamil Nadu, AIR 1972 SC 1586 (paras 11 & 12), Digyadarshan Rajendra Ramdassji Varu Vs. State of A.P., AIR 1970 SC 181 (para 9), Saifuddin Saheb Vs. State of Bombay, AIR 1962 SC 853 (vide para-34), Commissioner, Hindu Religious Endowments Vs. Sri Lakshmindra Thirtha Swamiar, AIR 1954 SC 282, etc.

29. In Commissioner of Police Vs. Acharya Jagadishwarananda Avadhuta, (2004) 12 SCC 770 the Supreme Court observed (vide paragraph – 9):-

> "The protection guaranteed under Articles 25 and 26 of the Constitution is not confined to matters of doctrine or belief but extends to acts done in pursuance of religion and, therefore, contains a guarantee for rituals, observances, ceremonies and modes of worship which are essential or integral part of religion. What constitutes an integral or essential part of religion has to be determined with reference to its doctrine, practices, tenets, historical background, etc. of the given religion".

30. However, the freedom to practice one's religion is subject to the interest of public order. Hence, for instance, it would not authorise the outraging of the religious feelings of another class with a deliberate intent, vide Ramji Lal Modi Vs. State of U.P., AIR 1957 SC 620.

31. Similarly, the authorities can make regulations so there may not be communal clashes and to prevent breach of peace between different communities, vide Jagadishwaranand Avadhuta Acharya Vs. Police Commissioner, Calcutta, AIR 1984 SC 51. Also religion cannot be practised in a manner which leads to noise pollution, vide Church of God Vs. K.K.R.M.C.Welfare Association, AIR 2000 SC 2773.

32. One cannot understand what objection can Harijans have to the carrying out by the Muslims of their dead bodies through the public streets, such as Kottaikaliamman Street and Mandukkal Street. After all these streets are not the private property of any individual or community, and hence all members of the public are equally entitled to use it. We are of the opinion that as long as the dead bodies are carried by Muslims (or by any other community for that matter) through these streets in a peaceful and orderly manner, no one ordinarily has a right to object to this.

33. As already stated above, Muslims are as much first rate citizens of this country as Hindus, Christians, Parsis, Sikhs, Buddhists, Jains, etc., and they have the right under Article 25(1) of the Constitution to practice their religion freely which includes the right to perform their religious rites and ceremonies including burying of their dead, in accordance with their traditional rites.

34. No doubt, the right to practise one's religion under Article 25(1) is subject to public order, but the respondents have not indicated

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anywhere in the counter affidavit that the public order will be disturbed if Muslims take their bodies through the public streets for burial in their graveyard. Moreover, even assuming that Harijans are objecting to taking out of their bodies by the Muslims through Kottaikaliamman Street or any other public street, the question arises what is the reason or basis for their objection? After all, merely on someone's objection a religious community cannot be prohibited from performing its rites and ceremonies. If it is said that merely on the objections of members of some other community the members of a community can be prohibited from performing their religious rites and ceremonies, on the ground that otherwise there would be breach of public order, then logically one will have to go to the extent of holding that merely if a non-Hindu objects to a Hindu going to temples, or a non-Muslim objects to a Muslim saying his Namaz, the authorities can prohibit Hindus from going to Temples or Muslims saying their Namaz on the ground that there may be breach of public order if that is permitted. In our opinion, no such view can be countenanced or accepted, otherwise the right under Article 25 of our Constitution to practice one's religion can be made wholly illusory and redundant on the mere objection of members of another religious community that performance of such religious rites and ceremonies offends their feeling, and there may be a breach of public order. There must be tolerance among the various religious communities in a secular State.

35. Since the members of the Harijan community are not before us in this case, and since we do not know the exact public order problem on the spot, we cannot express a final opinion as to what steps the authorities should take to strike a balance between the need to ensure that the Muslims of the said village are entitled to exercise their rights under Article 25(1) of the Constitution, and the requirement to maintain public order.

36. As observed by us in Rama Muthuramalingam Vs. Superintendent of Police, AIR 2005 Madras 1 the executive authorities are experts in the matter of public order as they have long experience and expertise in these matters. Similarly, in State of Karnataka Vs. Dr.Praveen Bhai Thogadia, AIR 2004 SC 2081 (vide paragraph – 7) the Supreme Court observed:-

> "Courts should not normally interfere with matters relating to law and order which is primarily the domain of the concerned administrative authorities".

However, we have indicated the broad constitutional guidelines which they must follow in this connection.

37. In view of the above, we are of the opinion that the Muslims in Balasamudram village are entitled to take their dead bodies through public streets, but the authorities will ensure that there are no communal clashes or disturbance of public order, by anyone. Whoever tries to create communal tension or ill will must be dealt with with an iron hand in accordance with law including the relevant provisions of the I.P.C., Cr.P.C., and other penal statutes.

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38.With these observations the writ petition is allowed. The authorities concerned are directed to comply with this judgment in its letter and spirit punctually. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

vu/sm

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   Dindigul.
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+ 1 CC to the Government Pleader SR NO 28854

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